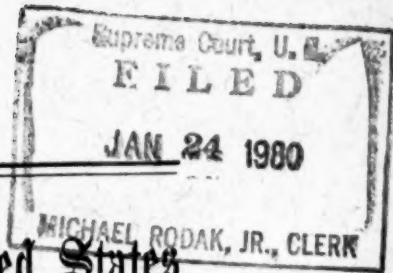


No. 79-799



In the Supreme Court of the United States

OCTOBER TERM, 1979

LEROY B. JONES, ET AL., PETITIONERS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

WADE H. McCREE, JR.,

Solicitor General.

ALICE DANIEL,

Assistant Attorney General.

LEONARD SCHAITMAN

HOWARD S. SCHER

Attorneys,

*Department of Justice,
Washington, D.C. 20530.*

CHARLES N. STEELE,

General Counsel.

KATHLEEN IMIG PERKINS,

Assistant General Counsel,

DEBORAH E. McFARLAND,

Attorney,

Federal Election Commission,

1325 K Street, N.W.,

Washington, D.C. 20463.

INDEX

	Page
Opinions Below-----	1
Jurisdiction -----	1
Questions Presented-----	2
Statutes Involved-----	2
Statement -----	2
Argument -----	6
Conclusion -----	10
Appendix -----	11

CITATIONS

Cases:	
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976)-----	6, 8
<i>NAACP v. Alabama</i> , 357 U.S. 499 (1958)-----	6, 8
Statutes:	
2 U.S.C. § 437g(a) (2)-----	5, 6, 7, 8
26 U.S.C. §§ 9031, <i>et seq.</i> -----	<i>passim</i>

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-799

LEROY B. JONES, ET AL., PETITIONERS

v.

FEDERAL ELECTION COMMISSION, ET AL.

*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 44a-77a) is not yet officially reported. It is unofficially reported at Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9092. The memorandum and order of the district court (Pet. App. 40a-42a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 23, 1979. The petition for a writ of cer-

tiorari was filed on November 21, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the Federal Election Commission is authorized by the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.*, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.*, to interview contributors to political campaigns for the purpose of determining whether an applicant for federal matching funds has satisfied statutory requirements.

2. Whether the interviews of petitioners by the staff of the Federal Election Commission violated the First or Fourth Amendment.

STATUTES INVOLVED

The Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031-42; 26 U.S.C. 9010(d), part of the Presidential Election Campaign Fund Act; and 2 U.S.C. 437(d)(a)(6), 437g, relevant sections of the Federal Election Campaign Act, are reprinted in Appendix A, *infra*.

STATEMENT

This petition, along with Nos. 79-800 and 79-801, arises out of the request of petitioner Committee to Elect Lyndon LaRouche (CTEL) for federal matching funds under the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* In this petition, CTET and the individual petitioners chal-

lenge on statutory and constitutional grounds an investigation conducted by the Federal Election Commission into possible violations of these statutes in connection with CTET's application for federal matching funds.

Because the Commission received no underlying documentation to substantiate CTET's claim for primary funds, the Commission staff conducted a field audit at CTET's headquarters in order to verify LaRouche's eligibility for the funds. See 26 U.S.C. 9033(b).¹ The audit suggested significant irregularities which, if established, would have prohibited LaRouche from receiving primary matching funds (Pet. App. 46a-48a).²

On the basis of this audit, the Commission expanded its investigation to include four organizations closely related to CTET and to interview individual CTET contributors in order to verify their contributions (Pet. App. 49a). Thereafter, six of the Commission's investigators interviewed or attempted to interview contributors (including the individual petitioners herein) in Delaware, Massachusetts, and Wisconsin

¹ One of the eligibility requirements for matching funds is that a candidate "certify" that he has received in excess of \$5000 in contributions of \$250 or less in each of at least 20 states. 26 U.S.C. 9033(b)(3)-(4).

² For example, it appeared that numerous money orders and cashier's checks purportedly contributed by people in different states were all drawn on the same bank within a short period of time (Pet. App. 47a-48a n.2). It also appeared that in the last two weeks of the eligibility period, CTET received substantial contributions from "volunteer coordinators" of an organization related to CTET (*id.* at 5).

(*id.* at 50a). Interviews were conducted through personal visits to the contributor's home or place of work and by telephone (*ibid.*).³ The results of the field interviews revealed that in neither Delaware nor Wisconsin had LaRouche raised the threshold amount of \$5000 in contributions of \$250 or less (Pet. App. 52a). Thus, LaRouche failed to qualify for primary matching funds.⁴

On April 28, 1977, petitioners filed this action in the United States District Court for the District of Columbia, challenging the Commission's authority to conduct its investigation and seeking damages for alleged harm caused by Commission investigators. Respondents moved to dismiss the complaint or for summary judgment, arguing, *inter alia*, that the interviews were within the Commission's statutory authority.⁵ On October 25, 1977, the district court granted summary judgment in favor of the respondents.

The court of appeals affirmed in substantial part, reversing as to two minor points not in contention here (Pet. App. 77a). The court held that 26 U.S.C. 9036(a), when read in conjunction with 26 U.S.C.

³ Three of the individual petitioners stated that they did not wish to talk, and the investigators desisted (Pet. App. 50a).

⁴ Because the Commission had reason to believe that CTEL had violated 26 U.S.C. 9042(c)(1) by making false statements in its submissions for matching funds, the Commission began a second round of interviews of CTEL contributors in Indiana (Pet. App. 11a). A more detailed statement of facts concerning LaRouche's disqualification is contained in the Commission's brief in opposition in No. 79-801.

⁵ The respondents also argued that, in any event, they were individually immune from suit. Neither the district court nor the court of appeals reached this question (Pet. App. 55a n.11).

9039(b), permits the Commission to conduct field interviews as part of its responsibility to determine whether to certify a candidate's eligibility to receive primary matching funds where the candidate's threshold submission contains irregularities suggesting the possibility of fraud. Moreover, the court held that 2 U.S.C. 437g(a)(2) authorizes interviews of individual contributors in connection with an investigation into whether a candidate's principal campaign committee has made false statements in requesting matching funds (Pet. App. 55a-56a; see also 79-801 Pet. App. 28a-61a).

As to the scope of the interviews, the court of appeals stated that the Commission's authority under Section 9030(b) is substantial and that the questions asked need only "bear [] at least some possible relation to the Commission's responsibilities under the Act" (Pet. App. 58a). The court then upheld a broad spectrum of questions as consistent with these statutory responsibilities.⁶ However, the court found that questions pertaining to contributors' political beliefs did not appear to bear any relation to the Commission's duties under the matching funds statute in the

⁶ Thus, because of the patent irregularities in LaRouche's threshold submission to the Commission (Pet. App. 59a-60a), the court upheld questions relating to whether the individual had contributed to CTEL, the amount of the contribution and what the source of the money was. The court also upheld questions pertaining to affiliations, activities, and financial relationships with CTEL and other closely related organizations because of the numerous last-minute contributions to CTEL, especially by persons who listed their occupation as "volunteer coordinator" for one of the closely related organizations (Pet. App. 60a).

context of this case. The court therefore reversed the grant of summary judgment on this point (*id.* at 61a-62a).⁷

Finally, the court of appeals held that the interview questioning, to the extent authorized by the Act, did not violate the First Amendment principles established in *Buckley v. Valeo*, 424 U.S. 1 (1976), and *NAACP v. Alabama*, 357 U.S. 449 (1958) (Pet. App. 63a-72a), and that the district court properly dismissed petitioners' Fourth Amendment claims because the CTCL contributors had consented to the interviews (*id.* at 72a-77a). The court noted that the record, except with regard to one of the petitioners, was devoid of any allegations that investigators had used force or coercion to obtain financial documents, bank records, or signed statements *id.* at 73a).⁸

ARGUMENT

In a thorough opinion on which we rely, the court of appeals held that (a) the Federal Election Commission has statutory authority to conduct interviews

⁷ With respect to the second set of interviews (see note 4, *supra*), the court found that petitioners' claim was "so totally lacking in record support that [it] need not even decide the precise extent to which [2 U.S.C. 437g(a)(2)] restricts the scope of questioning during an otherwise lawful field interview" (Pet. App. 62a).

⁸ With respect to petitioner Jones, however, the court of appeals reversed the grant of summary judgment because Jones had submitted an affidavit indicating that he had been threatened with prosecution, fine, and imprisonment if he did not turn over the requested documents (Pet. App. 74a-75a). Although respondents contest these allegations and allegations that they asked questions pertaining to political beliefs, this factual dispute will have to be resolved by the trial court.

of individuals reported as campaign contributors in order to verify that a candidate has met the statutory conditions for payment of matching funds and (b) the Commission's investigation in this case did not violate the First or Fourth Amendments. This decision is correct and does not conflict with the decisions of this Court or any court of appeals. Further review is not warranted.

1. The Commission has statutory authority to conduct field interviews, within the limits prescribed below, to verify contributions on which applicants for matching funds rely. 26 U.S.C. 9033(b) requires that a candidate "certify" to the Commission that the requisite contributions have been obtained, and 26 U.S.C. 9036(a) requires the Commission to approve the application for payment not later than ten days after the candidate "establishes his eligibility." Although these quoted phrases are not defined in the statute, the court of appeals gave them a practical construction by rejecting petitioners' view that the Commission may do no investigating to verify an application and may only examine the application to determine that it is in the proper form and that on its face it meets the statutory requirements (see 79-801 Pet. App. 41a). Where, as here, the application contains obvious irregularities, the court of appeals correctly held that a candidate has not "establish[ed] his eligibility" (Pet. App. 50a). Moreover, 2 U.S.C. 437g(a)(2) provides that if "the Commission, on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, has reason to believe that * * * a violation of the Act has occurred, [it] shall notify the

person involved * * * and shall make an investigation of such alleged violation * * *." Although Section 437g(a)(2) does not expressly refer to field investigations, that authority is necessarily implicit in the statutory grant.⁹

2. Petitioner contends (Pet. 8-20) that the field interviews of contributors conducted in this case violated the First Amendment, as construed in *Buckley v. Valeo, supra*, and *NAACP v. Alabama, supra*. These decisions, however, recognize that, under certain circumstances, an individual's right to privacy of association may give way to a sufficiently compelling governmental interest requiring disclosure. The governmental interest must survive "exacting scrutiny" and must bear "a 'relevant correlation' or 'substantial relation' [to] the information required to be disclosed." *Buckley v. Valeo, supra*, 424 U.S. at 64. Applying this analysis, the court of appeals correctly found that the field interviews of petitioners "served governmental interests sufficiently compelling to survive 'exacting scrutiny'" (Pet. App. 65a). The field interviews served the same purpose as the underlying threshold fund-raising requirement—that is, to ensure that only those candidates who can demonstrate substantial popular support will receive public matching funds. See *Buckley v. Valeo, supra*, 424 U.S. at 96. Indeed, this governmental interest is especially strong where, as here, the interviews are prompted by a finding of possible fraud.

⁹ Many of the statutory claims raised herein were rejected by the court of appeals in No. 77-1184, Pet. for Cert. in No. 79-801 (App. 28a-61a).

The interviews sustained by the court of appeals served these interests without unduly chilling petitioners' freedom of association. The court below expressly concluded that petitioners had "failed to allege facts sufficient to suggest that this 'chill' amounted to anything more than the natural response that anyone would have if questioned by a federal agent about campaign contributions" (Pet. App. 71a).

3. Petitioners also contend (Pet. 20) that the field interviews (and accompanying acquisition of documents) violated the Fourth Amendment. Petitioners claim that the interviews were not consensual and that the Commission staff used coercion and threats to "extort" consent.

The court of appeals, after a review of the record, concluded that the only facts alleged to support petitioners' claim of coercion were the "rather conclusory assertions of the interviewees that they felt 'intimidated' by the Commission agents" (Pet. App. at 73a).¹⁰

The court noted (*ibid.*) that petitioners

do not allege, nor is there anything in the record to suggest, that the agents used force or threats to gain entry into the homes of these interviewees, to induce them to respond to the agents' questions, or to compel them to sign statements or turn over financial information.

With respect to the Fourth Amendment claim, therefore, petitioners present only their disagreement with

¹⁰ Petitioner Jones, however, did allege facts sufficient to support a claim of coercion. See note 7, *supra*. The court of appeals accordingly reversed the grant of summary judgment as to this claim (Pet. app. 73a).

the factual findings of the two lower courts. This factual dispute does not warrant review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, Jr.,
Solicitor General.

ALICE DANIEL,
Assistant Attorney General.

LEONARD SCHAITMAN,
HOWARD S. SCHER,
Attorneys.

CHARLES N. STEELE,
General Counsel,

KATHLEEN IMIG PERKINS,
Assistant General Counsel,

DEBORAH E. MCFARLAND,
Attorney,

Federal Election Commission.

JANUARY 1980.

APPENDIX

STATUTES INVOLVED

2 U.S.C. § 437d(a)(6)

§ 437d. Powers of Commission

(a) The Commission has the power—

(6) to initiate (through civil actions for injunctive, declaratory, or other appropriate relief), defend (in the case of any civil action brought under section 437g(a)(9)), or appeal any civil action in the name of the Commission for the purpose of enforcing the provisions of this Act and chapter 95 and chapter 96 of the Internal Revenue Code of 1954, through its general counsel;

2 U.S.C. § 437g.

§ 437g. Enforcement

(a) (1) Any person who believes a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 has occurred may file a complaint with the Commission. Such complaint shall be in writing, shall be signed and sworn to by the person filing such complaint, and shall be notarized. Any person filing such a complaint shall be subject to the provisions of section 1001 of Title 18, United States Code. The Commission may not conduct any investigation under this section, or take any other action under this section, solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.

(2) The Commission upon receiving any complaint under paragraph (1), and if it has reason to believe that any person has committed a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954, or, if the Commission, on the basis

of information ascertained in the normal course of carrying out its supervisory responsibilities, has reason to believe that such a violation has occurred, shall notify the person involved of such alleged violation and shall make an investigation of such alleged violation in accordance with the provisions of this section.

(3) (A) Any investigation under paragraph (2) shall be conducted expeditiously and shall include an investigation, conducted in accordance with the provisions of this section of reports and statements filed by any complainant under this title, if such complainant is a candidate.

(B) Any notification or investigation made under paragraph (2) shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

(4) The Commission shall afford any person who receives notice of an alleged violation under paragraph (2), a reasonable opportunity to demonstrate that no action should be taken against such person by the Commission under this Act.

(5)(A) If the Commission determines that there is reasonable cause to believe that any person has committed or is about to commit a violation of this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954, the Commission shall make every endeavor for a period of not less than 30 days to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with the person involved, except that, if the Commission has reasonable cause to believe that—

(i) any person has failed to file a report required to be filed under section 434(a)(1)(C) for the calendar quarter occurring immediately before the date of a general election;

(ii) any person has failed to file a report required to be filed no later than 10 days before an election; or

(iii) on the basis of a complaint filed less than 45 days but more than 10 days before an election, any person has committed a knowing and willful violation of this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954;

the Commission shall make every effort, for a period of not less than one-half the number of days between the date upon which the Commission determines there is reasonable cause to believe such a violation has occurred and the date of the election involved, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with the person involved. A conciliation agreement, unless violated, shall constitute a complete bar to any further action by the Commission, including the bringing of a civil proceeding under subparagraph (B).

(B) If the Commission is unable to correct or prevent any such violation by such informal methods, the Commission may, if the Commission determines there is probable cause to believe that a violation has occurred or is about to occur, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order, including a civil penalty which does not exceed the greater of \$5,000 or an amount equal to the amount of any contribution or expenditure involved in such violation, in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business.

(C) In any civil action instituted by the Commission under subparagraph (B), the court may grant a permanent or temporary injunction, restraining order, or other order, including a civil penalty which does

not exceed the greater of \$5,000 or an amount equal to the amount of any contribution or expenditure involved in such violation, upon a proper showing that the person involved has engaged or is about to engage in a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954.

(D) If the Commission determines that there is probable cause to believe that a knowing and willful violation subject to and as defined in section 441j, or a knowing and willful violation of a provision of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 has occurred or is about to occur, it may refer such apparent violation to the Attorney General of the United States without regard to any limitation set forth in subparagraph (A).

(6)(A) If the Commission believes that there is clear and convincing proof that a knowing and willful violation of this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 has been committed, a conciliation agreement entered into by the Commission under paragraph (5)(A) may include a requirement that the person involved in such conciliation agreement shall pay a civil penalty which shall not exceed the greater of (i) \$10,000; or (ii) an amount equal to 200 percent of the amount of any contribution or expenditure involved in such violation.

(B) If the Commission believes that a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 has been committed, a conciliation agreement entered into by the Commission under paragraph (5)(A) may include a requirement that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of (i) \$5,000; or (ii) an amount equal to the amount of the contribution or expenditure involved in such violation.

(C) The Commission shall make available to the public (i) the results of any conciliation attempt, including any conciliation agreement entered into by the Commission; and (ii) any determination by the Commission that no violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 has occurred.

(7) In any civil action for relief by the Commission under paragraph (5), if the court determines that the Commission has established through clear and convincing proof that the person involved in such civil action has committed a knowing and willful violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954, the Court may impose a civil penalty of not more than the greater of (a) \$10,000; or (b) an amount equal to 200 percent of the contribution or expenditure involved in such violation. In any case in which such person has entered into a conciliation agreement with the Commission under paragraph (5)(A), the Commission may institute a civil action for relief under paragraph (5) if it believes that such person has violated any provision of such conciliation agreement. In order for the Commission to obtain relief in any such civil action, it shall be sufficient for the Commission to establish that such person has violated, in whole or in part, any requirement of such conciliation agreement.

(8) In any action brought under paragraph (5) or paragraph (7), subpoenas for witnesses who are required to attend a United States district court may run into any other district.

(9)(A) Any party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1), or by a failure on the part of the Commission to act on such complaint in accordance with the provisions of this section within 90

days after the filing of such complaint, may file a petition with the United States District Court for the District of Columbia.

(B) The filing of any petition under subparagraph (A) shall be made—

(i) in the case of the dismissal of a complaint by the Commission, no later than 60 days after such dismissal; or

(ii) in the case of a failure on the part of the Commission to act on such complaint, no later than 60 days after the 90-day period specified in subparagraph (A).

(C) In any proceeding under this paragraph the court may declare that the dismissal of the complaint or the action, or the failure to act, is contrary to law and may direct the Commission to proceed in conformity with such declaration within 30 days, failing which the complainant may bring in his own name a civil action to remedy the violation involved in the original complaint.

(10) The judgment of the district court may be appealed to the court of appeals and the judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28, United States Code.

(11) Any action brought under this subsection shall be advanced on the docket of the court in which filed, and put ahead of all other actions (other than other actions brought under this subsection or under section 437h of this title).

(12) If the Commission determines after an investigation that any person has violated an order of the court entered in a proceeding brought under para-

graph (5) it may petition the court for an order to adjudicate such person in civil contempt, except that if it believes the violation to be knowing and willful it may petition the court for an order to adjudicate such person in criminal contempt.

(b) In any case in which the Commission refers an apparent violation to the Attorney General, the Attorney General shall respond by report to the Commission with respect to any action taken by the Attorney General shall respond by report to the Commission with respect to any action taken by the Attorney General regarding such apparent violation. Each report shall be transmitted no later than 60 days after the date the Commission refers any apparent violation, and at the close of every 30-day period thereafter until there is final disposition of such apparent violation. The Commission may from time to time prepare and publish reports on the status of such referrals.

(c) Any member of the Commission, any employee of the Commission, or any other person who violates the provisions of subsection (a)(3)(B) shall be fined not more than \$2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions of subsection (a)(3)(B) shall be fined not more than \$5,000.

26 U.S.C. § 9010(d)

§ 9010. Participation by Commission in judicial proceedings

(d) *Appeal.* The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgements or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

CHAPTER 96—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT

§ 9031. Short title

This chapter may be cited as the "Presidential Primary Matching Payment Account Act."

§ 9032. Definitions

For purposes of this chapter—

(1) The term "authorized committee" means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

(2) The term "candidate" means an individual who seeks nomination for election to be President of the United States. For purposes of this paragraph, an individual shall be considered to seek nomination for election if he—

(A) takes the action necessary under the law of a State to qualify himself for nomination for election;

(B) receives contributions or incurs qualified campaign expenses; or

(C) gives his consent for any other person to receive contributions or to incur qualified campaign expenses on his behalf.

The term "candidate" shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking

nomination for election to be President of the United States.

(3) The term "Commission" means the Federal Election Commission established by section 437 c(a)(1) of Title 2, United States Code.

(4) Except as provided by section 9034(a), the term "contribution"—

(A) means a gift, subscription, loan, advance, or deposit of money, or anything of value, the payment of which was made on or after the beginning of the calendar year immediately preceding the calendar year of the Presidential election with respect to which such gift, subscription, loan, advance, or deposit of money, or anything of value, is made for the purpose of influencing the result of a primary election;

(B) means a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

(C) means funds received by a political committee which are transferred to that committee from another committee; and

(D) means the payment by any person other than a candidate, or his authorized committee, of compensation for the personal services of another person which are rendered to the candidate or committee without charge; but

(E) does not include—

(i) except as provided in subparagraph (D), the value of personal services rendered to or for the benefit of a candidate by an individual who receives no compensation for rendering such service to or for the benefit of the candidate; or

(ii) payments under section 9037.

(5) The term "matching payment account" means the Presidential Primary Matching Payment Account established under section 9037(a).

(6) The term "matching payment period" means the period beginning with the beginning of the calendar year in which a general election for the office of President of the United States will be held and ending on the date on which the national convention of the party whose nomination a candidate seeks nominates its candidate for the office of President of the United States, or, in the case of a party which does not make such nomination by national convention, ending on the earlier of—

(A) the date such party nominates its candidate for the office of President of the United States; or

(B) the last day of the last national convention held by a major party during such calendar year.

(7) The term "primary election" means an election, including a runoff election or a nominating convention or caucus held by a political party, for the selection of delegates to a national nominating convention of a political party, or for the expression of a preference for the nomination of persons for election to the office of President of the United States.

(8) The term "political committee" means any individual, committee, association, or organization (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any person for election to the office of President of the United States.

(9) The term "qualified campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value—

(A) incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election; and

(B) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

For purposes of this paragraph, an expense is incurred by a candidate or by an authorized committee if it is incurred by a person specifically authorized in writing by the candidate or committee, as the case may be, to incur such expense on behalf of the candidate or the committee.

(10) The term "State" means each State of the United States and the District of Columbia.

§ 9033. Eligibility for payments

(a) *Conditions.* To be eligible to receive payments under section 9037, a candidate shall, in writing—

(1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses;

(2) agree to keep and furnish to the Commission any records, books, and other information it may request; and

(3) agree to an audit and examination by the Commission under section 9038 and to pay any amounts required to be paid under such section.

(b) *Expense limitation; declaration of intent; minimum contributions.* To be eligible to receive payments under section 9037, a candidate shall certify to the Commission that—

(1) the candidate and his authorized committees will not incur qualified campaign expenses in excess of the limitations on such expenses under section 9035;

(2) the candidate is seeking nomination by a political party for election to the office of President of the United States;

(3) the candidate has received matching contributions which in the aggregate, exceed \$5,000 in contributions from residents of each of at least 20 States; and

(4) the aggregate of contributions certified with respect to any person under paragraph (3) does not exceed \$250.

(c) *Termination of payments.*

(1) *General rule.* Except as provided by paragraph (2), no payment shall be made to any individual under section 9037—

(A) if such individual ceases to be a candidate as a result of the operation of the last sentence of section 9032(2); or

(B) more than 30 days after the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of votes cast for all candidates of the same party for the same office in such primary election, if such individual permitted or authorized the appearance of his name on the ballot, unless such individual certifies to the Commission that he will not be an active candidate in the primary involved.

(2) *Qualified campaign expenses; payments to Secretary.* Any candidate who is ineligible under section 9037 shall be eligible to continue to receive payments under section 9037 to defray quali-

fied campaign expenses incurred before the date upon which such candidate becomes ineligible under paragraph (1).

(3) *Calculation of voting percentage.* For purposes of paragraph (1)(B), if the primary elections involved are held in more than one State on the same date, a candidate shall be treated as receiving that percentage of the votes on such date which he received in the primary election conducted on such date in which he received the greatest percentage vote.

(4) *Reestablishment of eligibility.*

(A) In any case in which an individual is ineligible to receive payments under section 9037 as a result of the operation of paragraph (1)(A), the Commission may subsequently determine that such individual is a candidate upon a finding that such individual is actively seeking election to the office of President of the United States in more than one State. The Commission shall make such determination without requiring such individual to reestablish his eligibility to receive payments under subsection (a).

(B) Notwithstanding the provisions of paragraph (1)(B), a candidate whose payments have been terminated under paragraph (1)(B) may again receive payments (including amounts he would have received but for paragraph (1)(B)) if he receives 20 percent or more of the total number of votes cast for candidates of the same party in a primary election held after the date on which the election was held which was the basis for terminating payments to him.

§ 9034. Entitlement of eligible candidates to payments

(a) *In general.* Every candidate who is eligible to receive payments under section 9033 is entitled to payments under section 9037 in an amount equal to the amount of each contribution received by such candidate on or after the beginning of the calendar year immediately preceding the calendar year of the Presidential election with respect to which such candidate is seeking nomination, or by his authorized committees, disregarding any amount of contributions from any person to the extent that the total of the amounts contributed by such person on or after the beginning of such preceding calendar year exceeds \$250. For purposes of this subsection and section 9033(b), the term "contribution" means a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address, but does not include a subscription, loan, advance, or deposit of money, or anything of value or anything described in subparagraph (B), (C), or (D) of section 9032(4).

(b) *Limitations.* The total amount of payments to which a candidate is entitled under subsection (a) shall not exceed 50 percent of the expenditure limitation applicable under section 441a(b)(1)(A) of Title 2, United States Code.

§ 9035. Qualified campaign expense limitations

(a) *Expenditure limitations.* No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of Title 2, United States Code, and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, \$50,000.

(b) *Definition of "immediate family."* For purposes of this section, the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

§ 9036. Certification by Commission

(a) *Initial certifications.* Not later than 10 days after a candidate establishes his eligibility under section 9033 to receive payments under section 9037, the Commission shall certify to the Secretary for payment to such candidate under section 9037 payment in full of amounts to which such candidate is entitled under section 9034. The Commission shall make such additional certifications as may be necessary to permit candidates to receive payments for contributions under section 9037.

(b) *Finality of determinations.* Initial certifications by the Commission under subsection (a), and all determinations made by it under this chapter, are final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 9038 and judicial review under section 9041.

§ 9037. Payments to eligible candidates

(a) *Establishment of account.* The Secretary shall maintain in the Presidential Election Campaign Fund established by section 9006(a), in addition to any account which he maintains under such section, a separate account to be known as the Presidential Primary Matching Payment Account. The Secretary shall deposit into the matching payment account, for use by the candidate of any political party who is eligible to receive payments under section 9033, the amount available after the Secretary determines that amounts for payments under section 9006(c) and for

payments under section 9008(b)(3) are available for such payments.

(b) *Payments from the matching payment account.* Upon receipt of a certification from the Commission under section 9036, but not before the beginning of the matching payment period, the Secretary or his delegate shall promptly transfer the amount certified by the Commission from the matching payment account to the candidate. In making such transfers to candidates of the same political party, the Secretary or his delegate shall seek to achieve an equitable distribution of funds available under subsection (a) and the Secretary or his delegate shall take into account, in seeking to achieve an equitable distribution, the sequence in which such certifications are received.

§ 9038. Examinations and audits; repayments

(a) *Examinations and audits.* After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037.

(b) *Repayments.*

(1) If the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary or his delegate an amount equal to the amount of excess payments.

(2) If the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made; or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses;

it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary or his delegate an amount equal to such amount.

(3) Amounts received by a candidate from the matching payment account may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred for a period not exceeding 6 months after the end of the matching payment period. After all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

(c) *Notification.* No notification shall be made by the Commission under subsection (b) with respect to a matching payment period more than 3 years after the end of such period.

(d) *Deposit of repayments.* All payments received by the Secretary or his delegate under subsection (b) shall be deposited by him in the matching payment account.

§ 9039. Reports to Congress; regulations

(a) *Reports.* The Commission shall, as soon as practicable after each matching payment period, submit a

full report to the Senate and House of Representatives setting forth—

(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees;

(2) the amounts certified by it under section 9036 for payment to each eligible candidate; and

(3) the amount of payments, if any, required from candidates under section 9038, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

(b) *Regulations, etc.* The Commission is authorized to prescribe rules and regulations in accordance with the provisions of subsection (c), to conduct examinations and audits (in addition to the examinations and audits required by section 9038(a)), to conduct investigations, and to require the keeping and submission of any books, records, and information, which it determines to be necessary to carry out its responsibilities under this chapter.

(c) *Review of regulations.*

(1) The Commission, before prescribing any rule or regulation under subsection (b), shall transmit a statement with respect to such rule or regulation to the Senate and to the House of Representatives, in accordance with the provisions of this subsection. Such statement shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation.

(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such state-

ment, then the Commission may prescribe such rule or regulation. Whenever a committee of the House of Representatives reports any resolution relating to any such rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph.

(3) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

(4) For purposes of this subsection, the term "rule or regulation" means a provision or series of interrelated provisions stating a single separable rule of law.

§ 9040. Participation by Commission in judicial proceedings

(a) *Appearance by counsel.* The Commission is authorized to appear in and defend against any action instituted under this section, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

(b) *Recovery of certain payments.* The Commission is authorized, through attorneys and counsel described in subsection (a), to institute actions in the district

courts of the United States to seek recovery of any amounts determined to be payable to the Secretary or his delegate as a result of an examination and audit made pursuant to section 9038.

(c) *Injunctive relief.* The Commission is authorized, through attorneys and counsel described in subsection (a), to petition the courts of the United States for such injunctive relief as is appropriate to implement any provision of this chapter.

(d) *Appeal.* The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

§ 9041. Judicial review

(a) *Review of agency action by the Commission.* Any agency action by the Commission made under the provisions of this chapter shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court within 30 days after the agency action by the Commission for which review is sought.

(b) *Review procedures.* The provisions of chapter 7 of Title 5, United States Code, apply to judicial review of any agency action, as defined in section 551 (13) of Title 5, United States Code, by the Commission.

§ 9042. Criminal penalties

(a) *Excess campaign expenses.* Any person who violates the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both. Any officer or member of any political committee who knowingly consents to any expenditure in violation of the provisions of section 9035 shall be

fined not more than \$25,000, or imprisoned not more than 5 years, or both.

(b) *Unlawful use of payments.*

(1) It is unlawful for any person who receives any payment under section 9037, or to whom any portion of any such payment is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

(A) to defray qualified campaign expenses; or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses.

(2) Any person who violates the provision of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(c) *False statements, etc.*

(1) It is unlawful for any person knowingly and willfully—

(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this chapter, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this chapter; or

(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this chapter.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(d) *Kickbacks and illegal payments.*

(1) It is unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of a candidate, or his authorized committees, who receives payments under section 9037.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of a candidate or his authorized committees shall pay to the Secretary, for deposit in the matching payment account, an amount equal to 125 percent of the kickback or payment received.

LIOTTA, MASTER & BUFFONE
Washington, D.C.
February 8, 1977

Charles Steele, Esquire
Federal Elections Commission
1325 K Street, Northwest
Washington, D.C. 20005

Re: Committee to Elect LaRouche.

DEAR MR. STEELE:

I would like to confirm two items that I believe we agreed upon earlier.

On February 2, 1977, the Commission received the written statement of Mr. McDonough verifying his contributions to the Committee to Elect LaRouche (CTEL). In our conversations on that date you stated that you believed this action would satisfy the Commission's request for written verifications in lieu of checks or money orders, of contributions for the state of Connecticut. Connecticut was the one state of the twenty submitted where the \$5,000 contribution had not been verified as requested.

I understand of course that the Commission has requested and is requesting further verification of these same contributions by way of personal interviews with contributors. As you know, it is our position that Section 9033 does not require these extreme measures, but we will not oppose it if it is carried out without intimidation and with advance notice to potential interviewees. I have instructed my client to notify any contributors who call the New York office of the United States Labor Party that they should speak with the Federal Elections Commission (FEC) investigators if they want to.

Finally, I just want to make clear what I told you on February 2, and 7, 1977 regarding our intention to file suit pursuant to Section 9041. It is our position that on February 2, 1977 we established our eligibility under Section 9033 in accordance with FEC "policy" and that pursuant to Section 9036 the Commission is obligated to certify our eligibility for payment to the Secretary of the Treasury within ten (10) days. Therefore, if our application is not acted upon by February 14, 1977, we will file our petition for review.

It is our position that Section 9033 does not specify in what manner a candidate must demonstrate his eligibility—it merely states that "a candidate shall certify to the Commission that, (3) the candidate has received matching contributions which in aggregate exceed \$5,000 in contributions from residents of each of at least 20 states . . ." Many months ago, my client "certified" that he had met this condition and then voluntarily complied with the Commission's "policy" that the contributions had to be verifiable by checks, money orders or written statements of contributors. Our agreement to provide these documents led to months of delay in processing our application. We have now complied with that policy and are requesting action pursuant to Section 9036.

Sincerely,

/ S /

ROBERT CASE LIOTTA.

cc: Ms. Marcia Pepper
Joel Joseph, Esq.